

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JAMIE A. CHAPA
TDCJ-CID #449292

V.

NATHANIEL QUARTERMAN

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C.A. NO. C-07-207

**ORDER DENYING PETITIONER'S
MOTION FOR VOLUNTARY DISMISSAL
AND SETTING RESPONSE DATE**

On August 6, 2007, Respondent filed a motion for summary judgment to dismiss Petitioner's § 2254 habeas corpus petition on numerous grounds, including failure to exhaust, limitations, and the merits. (See D.E. 22, 23). In response, on August 22, 2007, Petitioner filed a motion for voluntary dismissal. (D.E. 24). Petitioner stated that, after reviewing Respondent's motion for summary judgment, he agreed that he had not properly exhausted his state court remedies. Id. at 1. He requested that his petition be dismissed without prejudice so that he might exhaust his state court remedies before seeking federal review. Id.

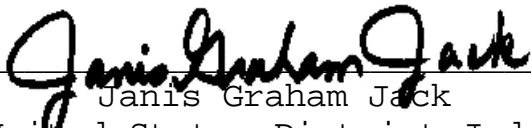
Respondent objected to dismissal without prejudice, arguing that Petitioner's claims are "conclusively time-barred and without merit," such that any dismissal must be with prejudice. (D.E. 25). A hearing on Petitioner's motion for voluntary dismissal was held on August 24, 2007.

Having considered the written pleadings and oral arguments of the parties, Petitioner's motion for voluntary dismissal without

prejudice (D.E. 24) is DENIED. It would be an abuse of discretion to dismiss without prejudice claims that are clearly time barred or meritless. See Horsley v. Johnson, 197 F.3d 134, 136 (5th Cir. 1999). However, Petitioner is still afforded the opportunity to argue the timeliness and merits of his claims in this petition.

Pursuant to the Order for Service of Process, Petitioner has thirty (30) days to respond to a dispositive motion. (See D.E. 6). Respondent filed his motion for summary judgment on August 6, 2007 (D.E. 22), and his amended motion for summary judgment on August 15, 2007. (D.E. 23). Employing the later date, plus three days for mailing, Petitioner has until Monday, September 17, 2007, to file a response to Respondent's motion for summary judgment.

ORDERED this 4th day of September, 2007.



Janis Graham Jack
United States District Judge